

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

VICKY CLOSE,

Plaintiff,

v.

PENNEY OPCO LLC et al.,

Defendant.

CASE NO. 3:24-cv-05756-DGE

ORDER TO SHOW CAUSE

This matter comes before the Court on its own motion. A key legal question concerning the viability of Plaintiff’s Washington Consumer Protection Act claim appears materially identical to a question that the Ninth Circuit recently certified to the Washington Supreme Court in *Montes v. Sparc Group, LLC*. See *Montes v. Sparc Group, LLC*, 2:22-cv-00201-TOR, Ninth Circuit No. 23-35496. In *Montes*, which originated in the Eastern District of Washington, the appellate panel certified the following question: “When a seller advertises a product’s price, coupled with a misrepresentation about the product’s discounted price, comparative price, or price history, does a consumer who purchases the product because of the misrepresentation

1 suffer an ‘injur[y] in his or her business or property’ under Wash. Rev. Code §§ 19.86.020 and  
2 19.86.090 if the consumer pays the advertised price?” *See Montes v. Sparc Group, LLC*, 2:22-  
3 cv-00201-TOR, Dkt. No. 32 at 2.

4 In this litigation, Plaintiff filed a complaint alleging that “[f]or years, JCPenney has  
5 engaged in a massive false discount advertising scheme across nearly all of its products on both  
6 its website and in its retail stores.” (Dkt. No. 1 at 2.) “JCPenney’s deceptive pricing scheme is  
7 intended to trick consumers into believing that its products are worth, and have a market value  
8 equal to, the inflated list price, and that the lower advertised ‘sale’ price represents a special  
9 bargain,” Plaintiff argues. (*Id.*) Plaintiff alleges that she was harmed by the scheme when she  
10 bought the Multi Sac North/South Zip Around Crossbody Bag, which was advertised as marked  
11 down from \$50 to \$20. (*Id.* at 24.) “In reality, and unbeknownst to Ms. Close, JCPenney had  
12 never offered the Bag at the purported regular price of \$50,” Plaintiff argues; indeed, in the  
13 weeks prior to her purchase, it was offered for \$14. (*Id.* at 25.) Accordingly, Plaintiff claims the  
14 advertised reference price constituted a material misrepresentation that induced her to purchase  
15 the bag for more money than it was worth, resulting in a loss of money. (*Id.*) Plaintiff brings  
16 one cause of action under the Washington Consumer Protection Act (Wash. Rev. Code  
17 § 9.86.090.) and seeks injunctive relief and money damages. (*Id.* at 27–32.)

18 Neither party has asked this Court to stay this matter in light of the pending *Montes*  
19 appeal, but based on its assessment that the *Montes* decision could resolve or narrow this dispute,  
20 the Court orders the parties to show cause why this matter should not be stayed. To determine  
21 whether a stay is appropriate, “the competing interests which will be affected by the granting or  
22 refusal to grant a stay must be weighed.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).  
23 Among those competing interests are “the possible damage which may result from granting a  
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1 stay, the hardship or inequity which a party may suffer in being required to go forward, and the  
2 orderly course of justice measured in terms of the simplifying or complicating of issues, proof,  
3 and questions of law which could be expected to result from a stay.” *Id.* In their responsive  
4 briefs, the parties should address the elements of the multi-factor test above, including potential  
5 benefits of a stay, such as judicial economy and efficiency, and any drawbacks, such as delay.  
6 The parties should further address the extent to which *Montes* may resolve or narrow this  
7 dispute.

8 Accordingly, the Court ORDERS both parties to show cause why this case should not be  
9 stayed pending resolution of *Montes*. The Court directs the parties to meet and confer to  
10 determine their positions as to a stay, and to respond as follows:

- 11 • If the parties agree on the propriety of a stay, or lack thereof, they may file a joint  
12 position statement no later than 14 days from this Order.
- 13 • If the parties do not agree, Plaintiff shall file a statement of its position 14 days  
14 from this Order, and Defendant shall file a statement 21 days from this Order.

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16 Dated this 20<sup>th</sup> day of June, 2025.

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19 David G. Estudillo  
20 United States District Judge  
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